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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
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09/655,336 09/05/00 UEDA

T 1422-437P

EXAMINER

HM12/1205
BIRCH STEWART KOLASCH & BIRCH LLP
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FALLS CHURCH VA 22040-0747

WANG, S

ART UNIT

PAPER NUMBER

1617
DATE MAILED:

12/05/00

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Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

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Office Action Summary	Application No.	Applicant(s)	
	09/655,336	UEDA ET AL.	
	Examiner Shengjun Wang	Art Unit 1617	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 1 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1) Responsive to communication(s) filed on ____.
 2a) This action is FINAL. 2b) This action is non-final.
 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4) Claim(s) 8-22 is/are pending in the application.
 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
 5) Claim(s) ____ is/are allowed.
 6) Claim(s) ____ is/are rejected.
 7) Claim(s) ____ is/are objected to.
 8) Claims 8-22 are subject to restriction and/or election requirement.

Application Papers

9) The specification is objected to by the Examiner.
 10) The drawing(s) filed on ____ is/are objected to by the Examiner.
 11) The proposed drawing correction filed on ____ is: a) approved b) disapproved.
 12) The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119

13) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).
 a) All b) Some * c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. ____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
 * See the attached detailed Office action for a list of the certified copies not received.
 14) Acknowledgement is made of a claim for domestic priority under 35 U.S.C. & 119(e).

Attachment(s)

15) Notice of References Cited (PTO-892)
 16) Notice of Draftsperson's Patent Drawing Review (PTO-948)
 17) Information Disclosure Statement(s) (PTO-1449) Paper No(s) ____.
 18) Interview Summary (PTO-413) Paper No(s). ____.
 19) Notice of Informal Patent Application (PTO-152)
 20) Other: ____.

DETAILED ACTION

Election/Restrictions

1. Restriction to one of the following inventions is required under 35 U.S.C. 121:
 - I. Claims 8-18 and 21-22, drawn to a method for suppressing or ameliorating a symptom accompanying diminished homeostasis, classified in class 424, subclass 439, 638,, 639,643, 646,655,667,682,702; class 514, subclass 563.
 - II. Claims 19-20, drawn to a method for improving metal taste, classified in class 424, subclass 439, 638,, 639,643, 646,655,667,682,702; class 514, subclass 563.
2. Inventions Group I and Group II are unrelated. Inventions are unrelated if it can be shown that they are not disclosed as capable of use together and they have different modes of operation, different functions, or different effects (MPEP § 806.04, MPEP § 808.01). In the instant case the different inventions have different functions, i.e., one is for improving the taste of mineral containing products, one is for treatment of symptom with diminished homeostasis. Further, search for invention Group I is not required for search for group II. Note the search is not limited to patent literature.
3. Because these inventions are distinct for the reasons given above and have acquired a separate status in the art because of their recognized divergent subject matter, restriction for examination purposes as indicated is proper.
If applicants elect Invention Group I, further species election is required.
4. This application contains claims directed to the following patentably distinct species of the claimed invention:

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Obesity (claim 9); anxiogenic symptoms (claim 10); premenstrual syndrome (claim 11); sensitivity to cold (claim 12); menopausal disorders (claim 13), sleep disorders (claim 14); and autonomic imbalance (claim 15).

Applicant is required under 35 U.S.C. 121 to elect a single disclosed species for prosecution on the merits to which the claims shall be restricted if no generic claim is finally held to be allowable. Currently, claims 8, 16-18, 21 and 22 are generic.

Applicant is advised that a reply to this requirement must include an identification of the species that is elected consonant with this requirement, and a listing of all claims readable thereon, including any claims subsequently added. An argument that a claim is allowable or that all claims are generic is considered nonresponsive unless accompanied by an election.

Upon the allowance of a generic claim, applicant will be entitled to consideration of claims to additional species which are written in dependent form or otherwise include all the limitations of an allowed generic claim as provided by 37 CFR 1.141. If claims are added after the election, applicant must indicate which are readable upon the elected species. MPEP § 809.02(a).

Should applicant traverse on the ground that the species are not patentably distinct, applicant should submit evidence or identify such evidence now of record showing the species to be obvious variants or clearly admit on the record that this is the case. In either instance, if the examiner finds one of the inventions unpatentable over the prior art, the evidence or admission may be used in a rejection under 35 U.S.C. 103(a) of the other invention.

5. A telephone call was made to Mr. Goozner on November 30, 2000 to request an oral election to the above restriction requirement, but did not result in an election being made.

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Applicant is advised that the reply to this requirement to be complete must include an election of the invention to be examined even though the requirement be traversed (37 CFR 1.143).

6. Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a petition under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(i).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Shengjun Wang, Ph.D. whose telephone number is (703) 308-4554. The examiner can normally be reached on Monday-Friday from 8:30 to 5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Minna Moezie, J.D., can be reached on (703) 308-4612. The fax phone number for the organization where this application or proceeding is assigned is (703) 308-4556.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-1235.

Shengjun Wang

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December 2, 2000

M. Moezie
MINNA MOEZIE, J.D.
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 1800